No. 31, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

STATE OF UTAH, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

ON BILL OF COMPLAINT

MOTION OF GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION FOR LEAVE TO FILE MEMORANDUM IN LIEU OF EXCEPTIONS TO REPORT OF SPECIAL MASTER, AND MEMORANDUM

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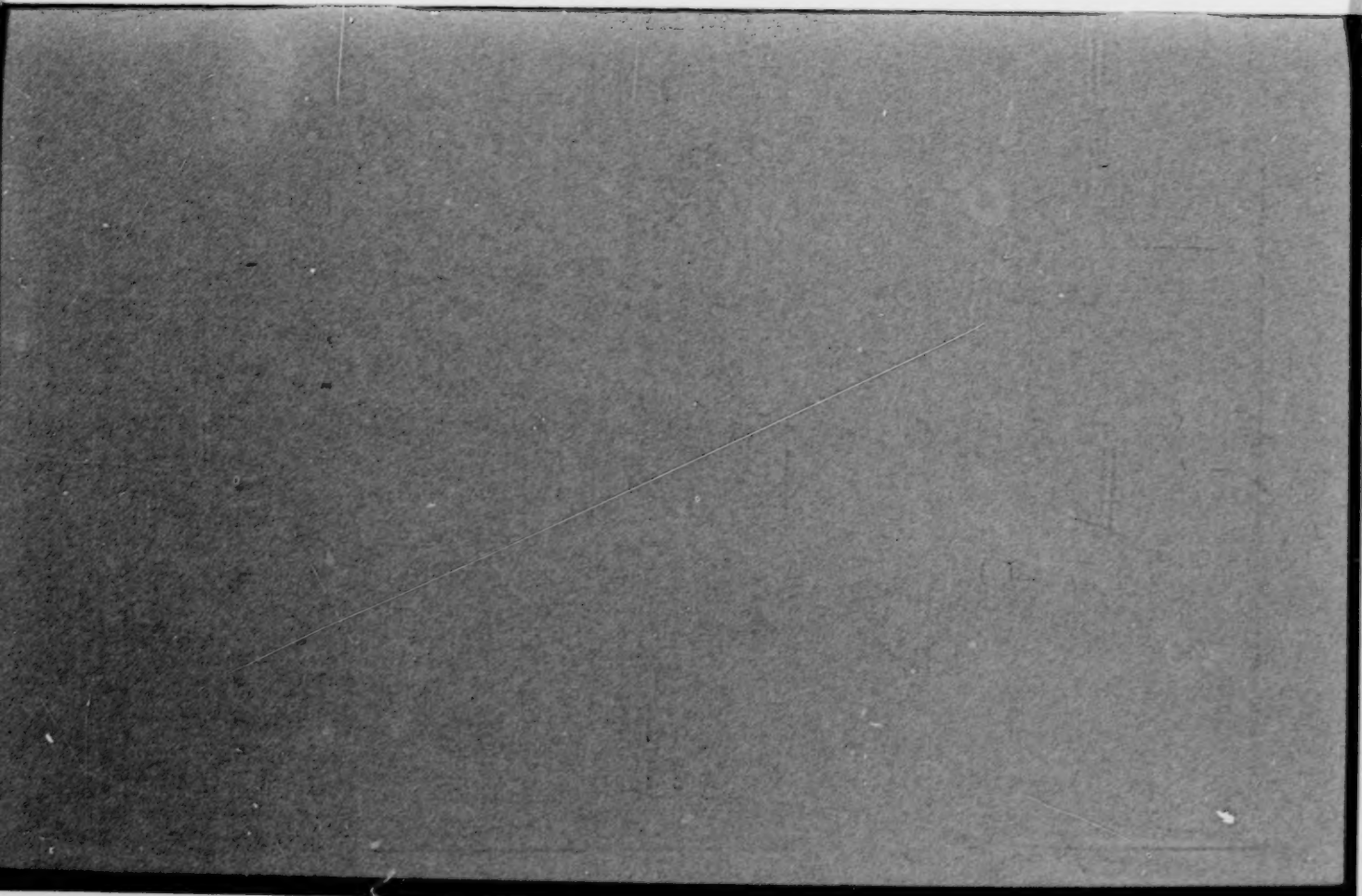

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MOTION FOR LEAVE TO FILE MEMORANDUM IN LIEU OF EXCEPTIONS TO REPORT OF SPECIAL MASTER

Great Salt Lake Minerals & Chemicals Corporation moves the Court for leave to file the annexed memorandum in lieu of exceptions to the Report of the Special Master.

The purpose of the memorandum is to advise the Court of the special circumstance under which Great Salt Lake Minerals & Chemicals Corporation acquiesces in the recom-

mendation of the Special Master that its motions to intervene in this action should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 31, Original

STATE OF UTAH, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

ON BILL OF COMPLAINT

MEMORANDUM IN LIEU OF EXCEPTIONS TO REPORT OF SPECIAL MASTER

STATEMENT

This original action was instituted upon the complaint of the State of Utah pursuant to the Act of June 3, 1966, 80 Stat. 192, as amended by the Act of August 23, 1966, 80 Stat. 349 (Rept. 52).[1] Section 2 of the Act authorized the Secretary of the Interior to convey by quitclaim deed to the state all right, title and interest of the United States "in lands including brines and minerals in solution in the brines or precipitated or extracted therefrom, lying below the meander line of the Great Salt Lake" as surveyed. It was expressly provided in Section 2 of the Act that the provisions of the Act shall not affect any valid

[1] The Report of the Special Master, filed Octoer 28, 1968.

existing rights or interests of third parties in or to lands within or below the meander line of the lake. The conveyance was effected by deed executed June 15, 1967.

As summarized by the Special Master (Rept. 6-8): the lands lying below the meander line of the lake include, in addition to the submerged lake bed, some 600,000 acres of land exposed by the recession of the water of the lake referred to as "relicted land"; all of the relicted lands and the submerged bed of the lake are claimed by the State of Utah; the United States claims some 325,574 acres of the relicted lands and private landowners claim the balance, some 275,000 acres; the claims of the United States and of private landowners overlap to the extent of some 108,780 acres; private landowners also claim the bed of the lake on the ground that the lake is not navigable.

Section 5 of the Act (Rept. 54) authorized the State to elect to pay the fair market value of the lands conveyed as determined by the Secretary of the Interior (§5(a)), or to maintain an action in this Court to determine the right, title and interest if any of the United States conveyed pursuant to §2 of the Act and to pay the fair market value therefor or the conveyance would be voided (§5(b)).

In its complaint (Rept. 57-67) the State asked that a decree be entered by this Court (1) quieting title in the State of Utah as against all claims of the United States to the bed of the Great Salt Lake located within and below the surveyed meander line of the lake; (2) specifically declaring that the United States has no right, title or interest to the lands involved or the minerals located therein (excepting land purchased and acquired from the State); and (3) perpetually enjoining the United States from further asserting any right, title or interest in the lands

or minerals and from interfering with the possession, management, or development of the lands by the State.

The United States answered (Rept. 57-65) asserting its title, and asked this Court to confirm (1) that the United States is owner of all of the lands lying below the meander line of the lake, and (2) that the State of Utah is without any title or interest in such lands save for the right to have the lands conveyed to it by the United States and to pay for them.

Motions for leave to intervene were filed by Morton International, Inc. (Morton) and by Great Salt Lake Minerals & Chemical Corporation (M & C Corporation).[2] Morton seeks to intervene as party defendant on the basis of its ownership of uplands adjacent to some of the relicted lands and on the basis of its claim to part of the submerged lake bed if it should be held that the lake is not navigable. M & C Corporation seeks to intervene as a party plaintiff based upon its status as a lessee and optionee of the State occupying part of the lands in controversy. M & C Corportion has expended approximately $11,000,000 on lands under lease and an option to lease from the State and a larger amount is committed for further expansion in the near future. In the alternative, M & C Corporation has sought to intervene as a party defendant based upon its ownership of uplands adjacent to some of the relicted lands.

After the motions to intervene were referred to the Special Master, the United States and the State of Utah, in March, 1968, entered into a stipulation (Rept. 69) intended to so limit the issues that this Court would not have to decide who, if not the State, is the true owner of the

[2] As designated by the Special Master in his Report.

lands claimed both by the United States and by private landowners such as M & C Corporation and Morton. (See the Supplemental Memorandum for the United States, page 2, filed with the stipulation.) The stipulation did not expressly put in issue the title to the brines and the minerals in solution in the brines of the lake.

The Special Master has recommended that the stipulation be modified so as to place in issue the title to the brines and the minerals in solution (Rept. 19-27), and that the motions to intervene be denied (Rept. 28-38).

POSITION OF M & C CORPORATION

I

THE DENIAL OF INTERVENTION IS SUPPORTABLE IF THE ISSUES ARE LIMITED AS PROVIDED IN THE MARCH, 1968 STIPULATION

M & C Corporation sought to intervene in this action because of the prospect that the rights of third parties would be substantially affected in the course of a determination of the claims of the State of Utah against the United States. If it had been the aim of the State in this action to identify and determine the land and mineral interests it is obliged to pay for, that is, lands and minerals owned by the United States, it would have been essential, we believe, to take into account the rights of third parties in those areas around the lake where lands claimed by private owners are also claimed by the United States.[3] It now appears, however, that the State's aim is to establish only the superiority of its title as against the United States, and that the State is willing to pay for all of the lands

[3] Map attached to March 1968 stipulation (bound with the Supplemental Memorandum of the United States of that date).

claimed by it for which it cannot establish a superior title. Paragraph 1 of the stipulation (Rept. 69) recites, in part, that:

> "the only objective of the present suit is to determine whether, *as against the United States,* the State held title to the lands, brines and minerals below the meander line of the Great Salt Lake which the United States claims to have owned and conveyed to the State on June 15, 1967 * * *." (Emphasis supplied.)

In paragraphs 3 and 4 of the stipulation (Rept. 69-70) the State binds itself to pay the United States for all submerged lands, all relicited lands, and all brines and minerals in solution in the brines of the lake or the conveyance thereof should be null "should the State fail to establish its own superior title as against the United States."

With the issues limited to the superiority of the State's title as against the United States, and with the State agreeing, in effect, to pay for possibly more than the United States owns and, therefore, for more than was conveyed to the State, the rights of third parties would not be in issue in this action.

II

THE STIPULATION IS NOT CONTRARY TO THE STATUTE

The Act of June 3, 1966, as amended, does not say that the rights and interests of third parties are to be adjudicated in this action. We submit that there is nothing in the statute that requires the consideration of third party rights in this action if the State of Utah does not choose to place such rights in issue.

We believe that the intent of Congress, as expressed in the statute, is clear that the State may choose not to place

third party rights in issue. The bill (S. 265, 89th Cong. 2d Sess.) which become the Act of June 3, 1966, originated in the Senate Committee on Interior and Insular Affairs. As reported out by the Committee, the bill did not provide for a judicial proceeding. The essential elements of the bill, so far as they are now material, provided for a conveyance from the United States to the State of Utah and for payment by the State of fair market value as determined by a commission to be established for that purpose. (S. Rept. No. 1006, 89th Cong., 2d Sess., pp. 3-5.)

The House Committee on Interior and Insular Affairs reported out a bill (H.R. 1791, 89th Cong., 2d Sess.) which would have directed the Attorney General of the United States to institute suit against the State to determine the inerests of the State and of the United States in the controversy (H. Rept. No. 1327, 89th Cong., 2d Sess., pp. 2, 6). The Senate bill was amended in its present form in Conference (H. Rept. No. 1540, 89th Cong., 2d Sess.) and the Senate's provision for payment by the State without litigation became one of the options available to the State pursuant to the statute.

The stipulation of March, 1968 provides that the State may acquire all lands and mineral interests involved in the controversy by payment therefor if it cannot establish superior title as against the United States. (Rept. 69-70.) This is precisely the position that the State would have been in if the State had elected to pay for the land directly rather than first institute this action. Congress contemplated a payment for all lands and mineral involved as an acceptable resolution of the controversy between the State of Utah and the United States. Since the stipulation requires the State, if it is unsuccessful in this action, to pay on the same basis it would have paid under §5(a), private

interests are in no worse position than they would have been in if the State had elected to proceed under §5(a) in the first instance. The stipulation, therefore, should be allowed to be filed.

III

M & C CORPORATION SHOULD BE PERMITTED TO INTERVENE IF THE STIPULATION IS NOT FILED

If the stipulation is not allowed to be filed, the very substantial property interests of M & C Corporation, based upon its state leases and option and upon its ownership of uplands adjacent to the lands in controversy, will be involved directly in the controversy and may be adversely affected. In the event the issues in this action are not confined to those to which the United States and the State have stipulated, M & C Corporation hereby renews its motions to intervene as a party plaintiff, or, in the alternative, as a party defendant in order that its interests may be represented.

The principal for the motions to intervene in brief are these:

1. The state lands leased to M & C Corporation are claimed in part by the United States and in part by third parties.

2. Rights of M & C Corporation emanating from its ownership of uplands adjacent to the lands in controversy are disputed by the United States and by the State.

3. The State of Utah, pursuant to the terms of its leases with M & C Corporation, has no obligation to M & C Corporation to perfect its title to all or a part of the lands

in controversy and has given no assurance that it will do so. Moreover, the State of Utah refused to grant a lease for some of the land in controversy pursuant to the terms of an option which the State granted prior to the Act of June 3, 1966, and which M & C Corporation exercised in accordance with its terms.

If third party rights are to be involved in this action, there will be no effective representation of the interest of M & C Corporation without its participation as a party.

Respectfully submitted,

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